



## TEXAS DEPARTMENT OF INSURANCE

### Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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## MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

### GENERAL INFORMATION

**Requestor Name**

Memorial Compounding Pharmacy

**Respondent Name**

Utica Mutual Insurance Company

**MFDR Tracking Number**

M4-16-3526-01

**Carrier's Austin Representative**

Box Number 1

**MFDR Date Received**

July 26, 2016

### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "I am seeking reconsideration on this bill that has been denied stating preauthorization is required. These medications do not require preauthorization and are to be retrospectively reviewed."

**Amount in Dispute:** \$975.39

### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** Submitted documentation did not include a position statement from the respondent.

### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
January 14, 2016	Pharmaceutical Compounds	\$975.39	\$975.39

### FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

**Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §133.250 sets out the procedures for reconsideration of medical bills.
3. 28 Texas Administrative Code §134.502 sets out the procedures for pharmaceutical services.
4. 28 Texas Administrative Code §134.503 sets out the fee guidelines for pharmaceutical services.
5. Texas Labor Code §408.027 sets out the requirements for payment of a health care provider.
6. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
  - 197 – Precertification/Authorization/Notification absent.
  - 39 – Services denied at the time authorization/pre-certification was requested.

- 18 – Exact duplicate claim/service.
- 29 – The time limit for filing has expired.

### Issues

1. What are the services in dispute?
2. Did Utica Mutual Insurance Company respond to the medical fee dispute in accordance with 28 Texas Administrative Code §133.307?
3. What rules determine if the disputed service requires preauthorization?
4. Is Utica Mutual Insurance Company's denial of payment for preauthorization supported?
5. Is Utica Mutual Insurance Company's denial of payment for timely filing supported?
6. What is the total reimbursement for the services in question?

### Findings

1. Memorial Compounding Pharmacy is seeking reimbursement of two pharmaceutical compounds dispensed on January 14, 2016. Documentation submitted to the division finds that the pharmaceutical compounds consist of the following ingredients:

#### Compound Prescription Number 4180612

- Meloxicam, NDC 38779274601, 0.18 grams
- Flurbiprofen, NDC 38779036209, 4.8 grams
- Tramadol HCl, NDC 38779237409, 6.0 grams
- Cyclobenzaprine HCl, NDC 38779039509, 1.8 grams
- Bupivacaine HCl, NDC 38779052405, 1.2 grams

#### Compound Prescription Number 6510255

- Gabapentin, NDC 38779246109, 3.0 grams
- Amitriptyline HCl, NDC 38779018904, 2.4 grams
- Amantadine HCl, NDC 38779041105, 4.8 grams
- Flurbiprofen, NDC 38779036209, 4.8 grams
- Bupivacaine HCl, NDC 38779052405, 1.2 grams

Memorial Compounding Pharmacy is seeking a total reimbursement of \$975.39 for these pharmaceutical compounds. These are the services considered for this dispute.

2. The Austin carrier representative for Utica Mutual Insurance Company is JT Parker and Associates. JT Parker and Associates acknowledged receipt of the copy of this medical fee dispute on August 3, 2016.

28 Texas Administrative Code §133.307 states, in pertinent part:

- (d) Responses. Responses to a request for MFDR **shall be legible and submitted** [emphasis added] to the division and to the requestor in the form and manner prescribed by the division.
  - (1) Timeliness. The response will be deemed timely if received by the division via mail service, personal delivery, or facsimile **within 14 calendar days after the date the respondent received the copy of the requestor's dispute** [emphasis added]. If the division does not receive the response information within 14 calendar days of the dispute notification, then the division may base its decision on the available information.
  - (2) Response. Upon receipt of the request, the respondent shall provide any missing information not provided by the requestor and known to the respondent. The respondent **shall also provide the following information and records** [emphasis added]: ...
    - (E) a statement of the disputed fee issue(s), which includes:
      - (i) a description of the health care in dispute;
      - (ii) a position statement of reasons why the disputed medical fees should not be paid;
      - (iii) a discussion of how the Labor Code and division rules, including fee guidelines, impact the disputed fee issues;
      - (iv) a discussion regarding how the submitted documentation supports the respondent's position for each disputed fee issue; and

- (v) documentation that discusses, demonstrates, and justifies that the amount the respondent paid is a fair and reasonable reimbursement in accordance with Labor Code §413.011 and §134.1 or §134.503 of this title if the dispute involves health care for which the division has not established a MAR or reimbursement rate, as applicable.

Utica Mutual Insurance Company consequently had a duty to provide a response to the division that included the listed information. Review of the documentation finds that no response supporting the denial of the disputed fees has been received from JT Parker and Associates to date. The division concludes that the carrier failed to respond to the medical fee dispute in accordance with §133.307(d). For that reason the division will base its decision only on the information available at the time of review.

- 3. 28 Texas Administrative Code §134.500(3) defines the closed formulary as “all Food and Drug Administration (FDA) approved prescription and nonprescription drugs prescribed and dispensed for outpatient use” except those requiring preauthorization. 28 Texas Administrative Code §134.530(b)(1) states:

Preauthorization is **only** [emphasis added] required for:

- (A) drugs identified with a status of "N" in the current edition of the *ODG Treatment in Workers' Comp* (ODG) / Appendix A, *ODG Workers' Compensation Drug Formulary*, and any updates;
- (B) any compound that contains a drug identified with a status of "N" in the current edition of the *ODG Treatment in Workers' Comp* (ODG) / Appendix A, *ODG Workers' Compensation Drug Formulary*, and any updates; and
- (C) any investigational or experimental drug for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, but which is not yet broadly accepted as the prevailing standard of care as defined in Labor Code §413.014(a).

Further, 28 Texas Administrative Code §134.530(d) states:

Treatment guidelines. Except as provided by this subsection, the prescribing of drugs shall be in accordance with §137.100 of this title (relating to Treatment Guidelines), the division's adopted treatment guidelines.

- (1) Prescription and nonprescription drugs included in the division's closed formulary and recommended by the division's adopted treatment guidelines may be prescribed and dispensed without preauthorization.
  - (2) Prescription and nonprescription drugs included in the division's closed formulary that exceed or are not addressed by the division's adopted treatment guidelines may be prescribed and dispensed without preauthorization.
  - (3) Drugs included in the closed formulary that are prescribed and dispensed without preauthorization are subject to retrospective review of medical necessity and reasonableness of health care by the insurance carrier in accordance with subsection (g) of this section.
- 4. Per Explanations of Benefits dated January 26, 2016, Utica Mutual Insurance Company denied disputed services with claim adjustment reason codes 197 – “PERCERTIFICATION [sic]/AUTHORIZATION/NOTIFICATION ABSENT,” and 39 – “SERVICES DENIED AT THE TIME AUTHORIZATION/PRE-CERTIFICATION WAS REQUESTED.”

28 Texas Administrative Code §134.530(b)(1) provides that preauthorization is only required for drugs that are excluded from the closed formulary. The division finds that Meloxicam, Flurbiprofen, Tramadol HCl, Cyclobenzaprine HCl, Gabapentin, Amitriptyline HCl, and Amantadine HCl are included in the closed formulary and have a status of “Y” in the current edition of the *ODG Treatment in Workers' Comp* (ODG) / Appendix A, *ODG Workers' Compensation Drug Formulary* effective on the date of service.

The division finds that because Bupivacaine HCl is an FDA approved drug, it is included in the closed formulary. 28 Texas Administrative Code §134.530(d)(2) states, “Prescription and nonprescription drugs included in the division's closed formulary that exceed or are not addressed by the division's adopted treatment guidelines may be prescribed and dispensed without preauthorization.” Per 28 Texas Administrative Codes §§134.500(3) and 134.530(d)(2), although Bupivacaine HCl is not specifically addressed by the ODG/Appendix A, it may be prescribed and dispensed without preauthorization.

Because the disputed compounds consist only of components included in the closed formulary that do not require preauthorization, the insurance carrier's denial got this reason is not supported.

5. Per Explanations of Benefits dated June 9 and 10, 2016, Utica Mutual Insurance Company denied disputed services with claim adjustment reason code 29 – "THE TIME LIMIT FOR FILING HAS EXPIRED." Texas Labor Code §408.027(a) states that "A health care provider shall submit a claim for payment to the insurance carrier not later than the 95th day after the date on which the health care services are provided to the injured employee."

Documentation submitted to the division supports that the initial pharmacy bills were received by Utica Mutual Insurance Company on or about January 21, 2016. This date is less than 95 days after the date of service.

In addition, 28 Texas Administrative Code §133.250 states, in relevant part:

- (a) If the health care provider is dissatisfied with the insurance carrier's final action on a medical bill, the health care provider may request that the insurance carrier reconsider its action ...
- (b) The health care provider shall submit the request for reconsideration no later than 10 months from the date of service.

Submitted documentation supports that requests for reconsideration were received by Utica Mutual Insurance Company on or about May 23, 2016. This date is less than 10 months from the date of service. Therefore, the division finds that denial of payment for this reason is not supported.

6. 28 Texas Administrative Code §134.503 applies to the compounds in dispute and states, in pertinent part:

- (c) The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:
  - (1) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed:
    - (A) Generic drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \$4.00$  dispensing fee per prescription = reimbursement amount;
    - (B) Brand name drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \$4.00$  dispensing fee per prescription = reimbursement amount;
    - (C) When compounding, a single compounding fee of \$15 per prescription shall be added to the calculated total for either paragraph (1)(A) or (B) of this subsection; or
  - (2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:
    - (A) health care provider; or
    - (B) pharmacy processing agent only if the health care provider has not previously billed the insurance carrier for the prescription drug and the pharmacy processing agent is billing on behalf of the health care provider.

The compound in dispute was billed by listing each drug included in the compound and calculating the charge for each drug separately as required by 28 Texas Administrative Code §134.502 (d)(2).

Each ingredient is listed below with its corresponding reimbursement amount as applicable.

Ingredient	NDC & Type	Price Unit	Total Units	AWP Formula §134.503(c)(1)	Billed Amount §134.503(c)(2)	Lesser of (c)(1) and (c)(2)
Compound Prescription # 4180612						
Meloxicam Powder	38779274601 Generic	\$194.67	0.18 gm	$\$194.67 \times 0.18 \times 1.25 = \$43.80$	\$35.04	\$35.04
Flurbiprofen Powder	38779036209 Generic	\$36.58	4.8 gm	$\$36.58 \times 4.8 \times 1.25 = \$219.48$	\$168.72	\$168.72

Tramadol HCl Powder	38779237409 Generic	\$36.30	6 gm	\$36.30 x 6 x 1.25 = \$272.25	\$168.00	\$168.00
Cyclobenzaprine HCl Powder	38779039509 Generic	\$46.332	1.8 gm	\$46.332 x 1.8 x 1.25 = \$104.25	\$80.37	\$80.37
Bupivacaine HCl Powder	38779052405 Generic	\$45.60	1.2 gm	\$45.60 x 1.2 x 1.25 = \$68.40	\$46.02	\$46.02
Compound Prescription # 6510255						
Gabapentin Powder	38779246109 Generic	\$59.85	3 gm	\$59.85 x 3 x 1.25 = \$224.44	\$156.75	\$156.75
Amitriptyline HCl Powder	38779018904 Generic	\$18.24	2.4 gm	\$18.24 x 2.4 x 1.25 = \$54.72	\$42.17	\$42.17
Amantadine HCl Powder	38779041105 Generic	\$24.225	4.8 gm	\$24.225 x 4.8 x 1.25 = \$145.35	\$61.58	\$61.58
Flurbiprofen Powder	38779036209 Generic	\$36.58	4.8 gm	\$36.58 x 4.8 x 1.25 = \$219.48	\$168.72	\$168.72
Bupivacaine HCl Powder	38779052405 Generic	\$45.60	1.2 gm	\$45.60 x 1.2 x 1.25 = \$68.40	\$48.02	\$48.02
Total						\$975.39

The total reimbursement is therefore \$975.39. This amount is recommended.

### **Conclusion**

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$975.39.

### ***ORDER***

Based on the submitted information, pursuant to Texas Labor Code Sec. 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services in dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$975.39, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

### **Authorized Signature**

	Laurie Garnes	December 9, 2016
Signature	Medical Fee Dispute Resolution Officer	Date

### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, 37 *Texas Register* 3833, applicable to disputes filed on or after June 1, 2012.

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the Medical Fee Dispute Resolution Findings and Decision** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**